

## **Conclusion**

As the CPUC explains, the combination of facts and data -- and not any one factor standing in isolation -- leads to the incontrovertible conclusion that the cellular carriers in the larger California markets both possess and exercise the power to charge supracompetitive prices and that regulation is required to ensure that cellular subscribers pay reasonable rates, free from unjust and unreasonable discrimination.



**AFFIDAVIT**

City of Washington     )  
District of Columbia    )

Charles W. King, being duly sworn, deposes and states that the foregoing is his testimony, that he has read the same and is familiar with the contents thereof, and that the matters and facts set forth in his testimony are true and correct to the best of his knowledge, information and belief.

  
\_\_\_\_\_  
Charles W. King

Subscribed and sworn before me this  
18th day of October, 1994

  
\_\_\_\_\_  
Notary Public

My Commission Expires November 14, 1996



**ATTACHMENT 1**

**California Cellular Carriers  
Earned Rates of Return - 1992**



**Table 1**

**California Cellular Carriers  
Earned Rates of Return - 1992**

Carrier	MSAs	Principal Owner(s)	Wholesale Revenue (\$000)	Percent Return Net Pft. + Assets (w/o Intang. Amort.)		Percent Return Total Assets (incl. Intang.)	
				Total	Wholesale	Total	Wholesale
Los Angeles Cellular	Los Angeles	McCaw / Bell South	315,928	78.12%	72.20%	76.24%	70.43%
Los Angeles SMSA	Los Angeles	PacTel / GTE Mobilnet	283,592	42.30%	44.54%	41.04%	43.23%
Bay Area Cellular	San Francisco San Jose Santa Barbara	PacTel / AT&T / McCaw 1/	130,352	131.50%	128.86%	122.00%	119.37%
GTE Mobilnet	San Francisco San Jose Salinas Napa Santa Cruz Santa Rosa	GTE Mobilnet, Inc.	101,438	28.10%	26.52%	28.08%	26.50%
PacTel Cellular	San Diego	PacTel	42,638	22.87%	24.75%	22.55%	24.41%
Sacramento Valley L.P.	Sacramento Stockton	PacTel	39,917	5.03%	20.25%	2.39%	15.32%
Sacramento Cellular	Sacramento	AT&T / McCaw 1/	37,157	137.16%	124.44%	66.81%	60.53%
U.S. West Cellular	San Diego	US West New Vector Group	33,266	-9.10%	-6.00%	-6.60%	-4.88%
Fresno Cellular	Fresno	AT&T / McCaw 1/	21,250	129.35%	120.82%	74.49%	69.50%



**Table 1**

**California Cellular Carriers  
Earned Rates of Return - 1992**

Carrier	MSAs	Principal Owner(s)	Wholesale Revenue (\$000)	Percent Return Net Pft. + Assets (w/o Intang. Amort.)		Percent Return Total Assets (incl. Intang.)	
				Total	Wholesale	Total	Wholesale
Fresno MSA	Fresno	Contel Cellular / GTE	21,166	21.36%	22.82%	21.32%	22.78%
McCaw of Stockton	Stockton	AT&T / McCaw	19,389	115.46%	84.89%	88.08%	64.56%
Ventura Cellular	Ventura	AT&T / McCaw 1/	14,144	30.76%	29.96%	29.00%	28.22%
Napa Cellular	Napa	AT&T / McCaw / PacTel 1/	9,029	63.22%	60.84%	39.46%	37.92%
Santa Barbara Cellular	Santa Barbara	AT&T / McCaw 1/	6,120	-8.18%	-8.04%	-8.33%	-8.18%
Cagal Cellular	Santa Rosa	AT&T / McCaw / PacTel 1/	4,929	49.27%	41.88%	40.05%	33.62%
Salinas Cellular	Salinas	AT&T / McCaw / PacTel 1/	4,895	15.11%	12.31%	11.91%	9.26%
Santa Cruz	Santa Cruz	N. D. Patel					
Four SMSA's			984,288	51.59%	50.98%	47.11%	46.55%
ALL CARRIERS			1,085,210	56.11%	55.05%	51.25%	50.13%

1/ AT&T takeover of McCaw is pending.

2/ Carrier reported \$0 wholesale revenue.



**ATTACHMENT 2**

**Transcript of the Testimony of Gary McLaughlin  
California P.U.C. Investigation 88-11-040  
May 23, 1994**



**BEFORE THE PUBLIC UTILITIES COMMISSION**

OF THE  
STATE OF CALIFORNIA

ADMINISTRATIVE LAW JUDGE MICHAEL J. GALVIN, presiding.

Investigation on the Commission's  
own motion into the regulation of  
cellular radiotelephone utilities.

1. 88-11-040

REPORTER'S TRANSCRIPT  
San Francisco, California  
May 23, 1994  
Pages 2424 - 2549  
Volume 17

Reported by: Lynn A. Stanghellini  
Maureen B. Inchauspé

H.C. Kaufman, Jr., Official Reporter  
PUBLIC UTILITIES COMMISSION, STATE OF CALIFORNIA



1 numerous ads, one of which is a California ad in the  
2 Fresno Bee pertaining to a May 19th, 1994 ad.

3 It is quite apparent that the cost of phones  
4 was identified in direct testimony. And therefore,  
5 this document should have been included in reply  
6 testimony.

7 As a matter of fact, three of the five ads  
8 are dated prior to the date of reply testimony.  
9 Therefore, I'll grant the motion.

10 Proceed.

11 MR. CASCIATO: Q Mr. McLaughlin, you were here  
12 for part of -- you were here for the extent of cross-  
13 examination of DRA's witness this morning, correct?

14 A Yes.

15 Q There was some testimony by him, and in  
16 fact, there were some questions through Mr. Weinstein  
17 on Friday, concerning whether or not resellers provide  
18 rate competition to the carriers.

19 Do you believe that your company provides  
20 rate competition to the carriers in the  
21 San Francisco/San Jose Bay Area?

22 A Yes.

23 Q And do you know whether or not resellers in  
24 other parts of California provide rate competition to  
25 the carriers?

26 A Yes, they do.  
27  
28



1 Q Do you know which resellers specifically at  
2 this time that may provide for rate plans that are  
3 cheaper than the carriers?

4 A I know of Cellular For Less, Cellular  
5 Services, and Business Cellular Services.

6 MS. TOLLER: I'm sorry. What was the last?

7 THE WITNESS: Business Cellular Services.

8 MS. TOLLER: Thank you.

9 MR. CASCIATO: That's all I have, your Honor.

10 ALJ GALVIN: And we have Mr. Hansen, he's not  
11 here.

12 Mr. Burns, we also have -- would you prefer  
13 Mr. Burns go first?

14 MS. TOLLER: Yes, your Honor.

15 MR. FABER: That's fine.

16 ALJ GALVIN: Proceed.

17 MR. BURNS: Thank you.

18 CROSS-EXAMINATION

19 BY MR. BURNS:

20 Q Good afternoon, Mr. McLaughlin. My name is  
21 Truman Burns, and I represent the Division of  
22 Ratepayer Advocates.

23 A Good afternoon.

24 Q Could you please turn to page 2 of your  
25 testimony, your direct testimony.

26 And referring to Question 4 where you  
27 discuss what certificated resellers do, is there  
28 anything else a reseller does that is not listed here?



1 forerunner to get cellular phones into the consumers'  
2 hands.

3 And, of course, we didn't have the  
4 opportunity to redesign our company. And therefore,  
5 we tried to not bundle as much as possible unless  
6 competition forced us to do so.

7 Q But market conditions did force you  
8 to do that?

9 A Yes.

10 Q And that was because bundled products were  
11 attractive to buyers in the market?

12 A Correct.

13 MR. MATTES: Thank you.

14 That's all I have.

15 ALJ GALVIN: Ms. Pierson.

16 MS. PIERSON: Nothing. Thank you, your Honor.

17 EXAMINATION

18 BY ALJ GALVIN:

19 Q I have a couple of questions.

20 You indicated that there are three resellers  
21 that provide lower rates. You didn't know what  
22 the rates were.

23 Do you know the range of difference between  
24 the facilities-based carriers and those resellers?

25 A They are into 2 and 3 cents a minute, 5 and  
26 \$6 access fees.

27 It would be according to the different plans  
28 they have.



1 Q Would the monthly basic charge be  
2 approximately the same?

3 A No. They would reduce that also.

4 Q Can you explain co-op advertising?

5 A Co-op advertising is the money that goes  
6 along sometimes with the activation of a number that  
7 can be either received as a hundred percent if you  
8 advertise using the carrier's name or as a percentage  
9 which may be a higher amount, also if you will run  
10 an ad under the guidance of the carriers.

11 Q Do you receive commissions as a reseller?

12 A No.

13 Q Have you in the past?

14 A No.

15 Q Have you received activation commissions?

16 A No. I'm sorry. If you're looking at any  
17 financial statements, it will have activation  
18 commissions from numbers that we activate for our  
19 customers outside this area, not included in the  
20 San Francisco-San Jose Bay Area.

21 Q What are C-1 credits?

22 A C-1 credits could be for roamer fraud, for  
23 dropped calls.

24 Q Does PCS install and repair phones?

25 A We install phones. We do not repair them.  
26 We take them to a repair area for the customer.

27 ALJ GALVIN: Any redirect?

28 MR. CASCIATO: Yes, your Honor.



**ATTACHMENT 3**

**Transcript of the Statement of Earl Nicholas Selby  
Counsel for Nextel Communications, Inc  
In California P.U.C. Application No. 94-02-018  
August 24, 1994**



BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE  
STATE OF CALIFORNIA

ADMINISTRATIVE LAW JUDGE THOMAS R. PULSIFER, presiding.

\* \* \* \* \*

In the Matter of the Application )	PREHEARING
of Los Angeles Cellular Telephone )	CONFERENCE
Company (U-3009-T), a general )	
partnership, to amend General )	Application
Order 96-A to permit cellular )	94-02-018
radiotelephone service providers )	
to enter into Customer-Specific )	
Contracts. )	

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Inc., Protestant.



1 Let's find out what the proposal is.

2 ALJ PULSIFER: All right. Thank you.

3 Mr. Selby?

4 MR. SELBY: Your Honor, just very briefly.

5 Mr. Casciato has already hit some of the  
6 points that I would make regarding Nextel.

7 Mr. Wilson said Nextel is now in the market.  
8 Well, the facts are that Nextel is in a very, very  
9 limited way in a very, very small part of the market in  
10 Los Angeles with approximately now a thousand customers.

11 To say that Nextel is in the market suggests  
12 to the Commission that Nextel is everywhere the cellular  
13 carriers are.

14 Well, your Honor, I'm sure my client would  
15 like to be, and it's aiming to be, but it's not there  
16 yet. It does not have cellular voice service,  
17 Northern California or the Central Valley, so to say  
18 that Nextel is, quote, unquote, in the marketplace is a  
19 misrepresentation.

20 Mr. Wilson knows that Nextel's not offering  
21 service in most of the places where cellular carriers  
22 are offering service in California.

23 The idea that Nextel does compete in  
24 San Francisco and Sacramento and Bakersfield, Fresno,  
25 Stockton, San Diego, Redding, Chico, wherever you want  
26 to name it, outside of the Los Angeles area, is -- is --  
27 is -- is just incorrect.

28 We're not yet there.



1           Now, the way this is going, it looks like the  
2 hearing is going to focus on Nextel and what Nextel is  
3 doing, as if Nextel should be under the microscope,  
4 which is really to turn this application process  
5 upside-down. But it -- I will have to confer with my  
6 client, and if that's the way the proceeding will go,  
7 then that's the way it will go.

8           But those are certainly matters of contested  
9 fact. And to say that Nextel is able to respond more  
10 efficiently than cellular carriers -- I beg to differ,  
11 your Honor. That is a question of fact.

12           Mr. Wilson may have his view and his client  
13 may have its view as to whether Nextel can or cannot  
14 respond more efficiently to customer needs than the  
15 cellular carriers with their two million strong customer  
16 base.

17           We're going to disagree with that about that  
18 one until the cows come home. It's inherently a matter  
19 of fact. And so at the heart of this application are  
20 very highly contested matters of fact, and I think you  
21 can tell from the emotion that Mr. Casciato just brought  
22 to those points that these are not points that the  
23 parties are prepared to just lie down on.

24           These are very highly contested matters, and  
25 if the Commission is going to make a decision in this  
26 matter, it has to have a factual record on which to base  
27 its decision.

28           Thank you.



**ATTACHMENT 4**

Articles relating to NexTel in The Wall Street Journal and  
The New York Times, August and September 1994



# THE WALL STREET JOURNAL

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★ ★ ★

WESTERN EDITION

WEDNESDAY, AUGUST 31, 1994

PALO ALTO, CALIFORNIA

## Radio Flier

### Old Dispatch Systems Are Ticket to Riches For Former FCC Man

Mr. O'Brien's Nextel Plans  
A Vast Cellular Network.  
But Competition Is Fierce  
Can the MCI Deal Be Saved?

By GAUTAM NAIK and DENNIS KNEALE  
Staff Reporters of THE WALL STREET JOURNAL

NEW YORK — In a world of cellular phones and microwave transmission, consider the lowly radio-dispatch business. There are, after all, still millions of truckers, cabbies and plumbers who communicate with a dispatcher over the crackly, scratchy systems on those wonderfully old-fashioned radios.

In this, Morgan E. O'Brien saw opportunity. A former staff member at the Federal Communications Commission, he thought: If you could buy up all of these radio frequencies, you could make a national network out of them, transform them into a sexy cellular-phone system—and suddenly hold a prize worth a fortune.

That is how Nextel Communications Inc. came into being. How it grew, using stock, more stock and then even more stock, is just as remarkable.

Mr. O'Brien has spent a total of \$4 billion to assemble about a thousand local dispatch systems, and all but \$150 million of it has been in the form of new shares. Nextel has doubled its common shares since going public in January 1992 and plans to almost triple that to 293 million shares to fund two new deals.

Radio dispatch is the stepchild of the wireless world—the two-cups-and-a-string system that for 40 years has dispatched construction crews and other blue-collar fleets. Mr. O'Brien wants to rebuild hundreds of local systems to challenge the cellular businesses in each local market.

No one has ever tried this before. Some outsiders say it can't be done. Nextel's first test in Los Angeles has been marred by customer complaints and technological glitches. And on Monday, a key part of Mr. O'Brien's strategy collapsed when MCI Communications Corp., which had agreed to invest \$1.36 billion in Nextel, unexpectedly pulled out, in part because it is worried about the monumental engineering feat that Nextel must pull off. Mr. O'Brien is racing to rescue the MCI deal and soothe the reluctant suitor's concerns.



Morgan E. O'Brien

Without MCI, Nextel is a dwarf in a land of giants. AT&T Corp. is acquiring hotshot McCaw Cellular Communications Inc., and rivals include six Baby Bells, GTE Corp., and Sprint Corp., multibillion-dollar players all. And Nextel? Its annual sales were less than \$70 million in the fiscal year ended last March, when it posted an operating loss of almost \$60 million.

#### The Shrewd Bureaucrat

A fair-haired, 49-year-old lawyer raised and schooled in Washington, Morgan O'Brien is a veteran federal bureaucrat who has built Nextel with a shrewd sense of dealmaking and a soft, glad-handing style. As he troled the backwaters of the outmoded dispatch business, buying up underpriced properties from unsophisticated owners, he kept his real motive secret: to transform the crazy-quilt of dispatch systems into a single cellular network.

Nextel has done a magnificent job of doing the deals. But do I look in the rear-view mirror and see them closing in? No," says John Stupka, who heads the large cellular business of Southwestern Bell Corp. Susan Passoni, an analyst at Cowen & Co. in Boston, says, "Nextel is great at hyping itself. Now it's a 'show me' story."

Not to worry, insists Nextel's Mr. O'Brien, sparring no hubris: "Our Nextel system is a replacement for the national telephone infrastructure," he says. Cellular titans are mired in old analog technology and must rebuild, he adds. "I don't think they can cope with that. I don't think they understand it."

#### The Final Gem

Mr. O'Brien put the crowning touch on his buying binge earlier this month, agreeing to pay a total \$2.4 billion in stock to buy Motorola Inc.'s dispatch properties and Dial Page Inc. "Now," Mr. O'Brien gloats, "we own North America. There's nothing left to buy."

Those are strong words from a bureaucrat with little experience running the businesses he buys. Mr. O'Brien spent the 1970s at the FCC, overseeing the licensing of souped-up dispatch systems known as SMR, for specialized mobile radio. His arcane knowledge of FCC rules—and how to get around them—was crucial to the Nextel effort.

Mr. O'Brien spent the 1940s as a Washington partner at the law firm of Jones, Day, Reavis & Pogue, representing mobile-radio clients at the FCC. Nextel's grand scheme arose from an epiphany he had in 1957. Cellular-phone systems were soaring in value, but dispatch was largely ignored, creating a huge "value gap." Late one night, shuffling papers on his dining-room table, Mr. O'Brien suddenly realized the two industries were the same: They

Please Turn to Page A1, Column 1

#### Continued From First Page

use the same resource, the radio-wave spectrum.

Dispatch and cellular even use the same neighborhood of airspace, 800 megahertz. The FCC had merely created artificial barriers between the two. Later, Mr. O'Brien wondered: Why couldn't someone buy up cheap dispatch airspace and rebuild the systems into a cellular network?

Mr. O'Brien couldn't persuade his clients to go on a shopping spree to assemble the undervalued properties. So he persuaded his law firm to fund the start-up costs of doing it himself. He was an entrepreneur trapped in a lawyer's body: "I felt like someone contemplating a sex-change operation."

#### The First Deal

In mid-1987 Mr. O'Brien and his partners did their first deal, agreeing to pay \$3 million for two systems in Fresno and Bakersfield, Calif. He had no financing, but knew the required FCC review could drag on for months, giving him time to raise capital. Soon after, he hired Brian D. McAuley as president, and formed Fleet Call Inc., which would later become Nextel.

Then the buying began.

Mr. O'Brien and a sidekick, Senior Vice President Jack A. Markell, started out in Florida and California, armed with an FCC list of systems, a stack of letters of intent, and beepers, a cellular phone and spare batteries. They ironed out deals in coffee shops and diners, always driving a rented Lincoln.

Sal Dragotta had operated his radio-dispatch business in Milwaukee for most of three decades without getting much notice. So he was surprised when Mr. O'Brien wooed him to embarrassing lengths over five months in 1990.

Mr. Dragotta finally caved in after Messrs. O'Brien and Markell grilled him through breakfast and lunch at the local West Alice Eatery, waxing on about cash flows and economies of scale. He couldn't understand their persistence: \$1.5 million for a tiny dispatch company no one had ever heard of.

"I was suspicious," Mr. Dragotta says, "but they offered good money."

James Hopper, a Dallas co-owner of three dispatch systems, still remembers the day Mr. O'Brien stroled into his office. "He had this air about him that said 'We're going to take over the SMR network, with you or without you,'" he says. Nextel bought the three systems in late 1990 for more than \$6 million in cash, three times what Mr. Hopper had expected.

In another deal, Messrs. O'Brien and Markell holed up at a Red Lion hotel in Santa Barbara, Calif., and summoned dispatcher James Evans.

"They were awfully persuasive," says Mr. Evans, who agreed to sell when Mr. O'Brien "rounded the price in just a kind of nonchalant manner to a figure that was 20% higher than what I could expect." Co-owner John Franklin wasn't convinced, so the Nextel duo trooped over to Mr. Franklin's house to woo him over a home-cooked meal. It worked.

Messrs. O'Brien and Markell soon honed the perfect pitch for wary owners: The dispatch industry is dying. The technology is tapped out, and cellular operators will soon wipe out dispatch owners altogether by adopting digital technology. "Look," Mr. O'Brien would say, playing on his FCC past, "I don't see the long-term competitive viability of this industry, and I've been at it since 1970."

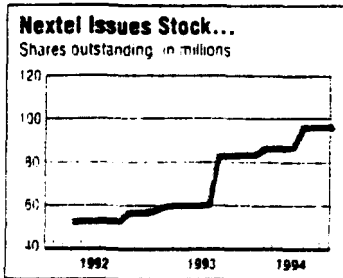
The clincher: The way to survive was to sell to Nextel.

This rankled some dispatchers, who

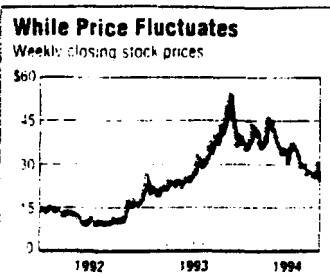


# Radio Flier: Nextel Pins Hopes for Cellular Riches Nationwide on Lowly Two-Way Dispatch Systems

## How Nextel Grows



Sources: Nextel, Baseline



didn't like a Washington lawyer in suspenders telling a blue-collar industry that it was bound for extinction.

"All these Wall Street types have come in telling you all these great things they're going to do, but they don't know a damn thing about radios," says Charles R. Wells, owner of Mobile UHF Inc. in Garden Grove, Calif., who rejected a Nextel offer. At a dispatch trade show in Tampa in 1992, he publicly blasted Nextel's plans as "monstrous."

Dispatch owners typically didn't know how to value their businesses; many couldn't even say how much recurring revenue they had. Mr. O'Brien wanted to bid low: six-and-a-half times a year's cash flow, a fortune for a dispatch owner but a fraction of the value of a cellular system. So he hired consultants to write articles in radio-dispatch trade publications citing that measure as a fair value. Then he clipped the articles and presented them when making an offer, he says.

When an owner balked, Mr. O'Brien gently admonished. "This is a once-in-a-lifetime opportunity, and you're going to pass it up?" When an owner delayed, he cautioned: "I have a limited amount of money to spend, and there are other deals out there." Now and then, Mr. O'Brien would hand over a signed contract, leave it blank for the seller—and give him 24 hours to return it.

"The way he puts pressure on you, it's so disarming," says Daniel Rudnick, who sold his Santa Maria, Calif., system to Nextel. Mr. O'Brien offered \$3 million for the five-year-old business with 400 customers and 3,000 radios — "more than we could make in 10 years," Mr. Rudnick says. The final price was \$5 million.

Mr. O'Brien makes no apologies for his approach, which made millionaires of a passel of small-time owners. "Mom and Pop are pretty damn smart. They took care of themselves," he says. Many sellers concur. "They were more than fair," Mr. Rudnick says.

All along, Mr. O'Brien withheld his cellular secret. When Nextel lobbied at the FCC in 1990 for waivers to rules that limited how rapidly Nextel could assemble its systems, the filing didn't play up the cellular angle, emphasizing instead how to improve dispatch service. By early 1991, Nextel had won FCC approval.

Unshackled, Nextel began assembling properties at a furious pace. Two-thirds of its total customer base has been added just in the past year. In one three-week span last year, Mr. O'Brien signed 23 deals to buy 54 systems in Florida. At one point, he was horrified to learn he had offered \$100,000 to a puzzled construction contractor in New York. The contractor, it turned out, didn't even own a system; he merely had a license to use a dispatch radio.

The last, best piece was Motorola's own portfolio, which Mr. O'Brien came to view

as "my obsession, my Moby Dick." The Motorola systems would roughly double Nextel's customer base to 650,000, add depth to Nextel channels and widen its access to 48 states and conceivably 95% of the population.

Last fall, Motorola agreed to sell about half of its systems to Nextel, but decided to sell the rest to Nextel rivals Dial Page and OneComm Corp., taking stakes in all three.

Enter MCI, which in late February anointed Nextel as its sole wireless play and agreed to invest \$1.36 billion over a few years for a 17% stake. MCI imposed an important condition that gave it trouble this week: It insisted that before the investment in Nextel could proceed, Nextel had to close the deal on Motorola's assets.

Nextel was emboldened, but Motorola worried that MCI's proposed investment would make Nextel the pre-eminent player and "strand" Motorola's planned stake in Dial Page and OneComm, says Nextel's Mr. McAuley. The Nextel solution: Buy the two rivals and buy all of Motorola's dispatch businesses.

But in the revised pact earlier this month, Motorola won veto power over any future Nextel deals — including the MCI investment. That has been nettlesome as MCI and Motorola have bickered in recent days over price, terms and technology, while Mr. O'Brien tries to balance the divergent demands of the two heavyweights.

That depiction "implies I am like Solomon, but really we're more like the baby" in this dispute, Mr. O'Brien says.

The sides met almost round-the-clock through last weekend, then released a statement Monday saying they had scuttled the MCI deal and were working on new terms.

Negotiators for Nextel, MCI and Motorola huddled yesterday afternoon at the Manhattan offices of MCI's law firm, but Nextel executives stopped short of expressing hope that the deal can be resurrected.

Mr. McAuley, Nextel's president, says MCI's cash "was never the main purpose" of the MCI pact, and that a strategic alliance with the long-distance company is the goal. But Mr. O'Brien is more blunt. "A strategic alliance without cash is sort of like your sister's kiss. It's just not that exciting," he says.

## Mutual Benefits

Some observers believe mutual needs will push MCI and Nextel together. MCI needs a wireless partner to counter AT&T-McCaw. Nextel, a downscale vendor unknown to yuppies with pocket phones, needs MCI's brand name and cash. By early 1997, Nextel plans to spend \$2 billion and endure losses of half a billion more to rebuild the dispatch properties into a digital-cellular network of 4,000 "cells" that can serve 1.5 million customers.

But huge technical and marketing obstacles loom, raising the chance that Nextel won't be able to transform the hodgepodge of outdated dispatch systems. Some industry veterans doubt that current dispatch customers, who spend only \$14 to \$15 per month per user, will be willing to pay cellular-style bills of \$50 a month.

In addition, while a customer can switch to digital service for their two-way radio transmissions, those that refuse to adopt the new technology eventually would be forced off the Nextel network some years down the road to make room for the digital services. But because Nextel has bought most major properties, many such customers may have nowhere to go.

On technology, "Nextel is pushing the envelope," says Nicholas Kauser, chief technology officer at rival McCaw. Nextel hopes the dispatch systems can serve up to 180 times as many customers as usual by switching to the cellular approach and converting to digital transmission. "It's an added complexity," Mr. Kauser says.

Customers have doubts, too. Bob & Dave's Towing in Whittier, Calif., used 19 new Nextel phones in the Los Angeles trial, but the phones would crash at least once a week. Drivers resorted to pagers. "I wouldn't recommend [Nextel] at this time," says Robert Sellers, the towing company's owner.

Nextel's Mr. O'Brien counters that the snags will be worked out, and he continues to hold faith in the epiphany he had in 1987: Spectrum is spectrum, and cellular and dispatch are really one and the same. "I feel exactly like someone who wrote a play and is now going to see it performed," he says, adding that now he wants "to see if all these ideas we've had make sense."



## COMPANY NEWS

# MCI Severs Negotiations With Nextel

## Motorola Disagreement Unravels Wireless Deal

By EDMUND L. ANDREWS

Special to The New York Times

WASHINGTON, Sept. 1 — The MCI Communications Corporation formally ended a proposed \$1.3 billion deal with Nextel Communications Inc., the company on which it had based its plans for building a nationwide wireless telephone network.

Citing intractable disagreements with Motorola Inc., a major shareholder in Nextel that had veto power over a deal, MCI said today that it had definitively broken off all talks.

"Although discussions were proceeding along positive lines with Nextel, any new transaction would have required Motorola's consent," the company said in a terse statement. "MCI and Motorola were unable to reach agreement on terms."

### No Wireless Strategy

By driving a stake through the deal, MCI, the nation's second-largest long-distance carrier, is now left without a wireless strategy at a time when companies like the AT&T Corporation and the regional telephone companies are racing to build big new cellular networks.

The deal raises questions about whether MCI blundered in signing up as a partner with Nextel, a start-up company that is trying to offer nationwide cellular-like telephone service using radio frequencies set aside for linking truck and taxi fleets. Nextel's technology, developed by Motorola, is still brand new and has been running into problems in delivering sound quality on a par with cellular telephones.

MCI executives declined to elaborate on the obstacles, saying merely that they were based on terms and price. Though MCI had planned in February to acquire a 17 percent stake in Nextel for \$36 to \$38 a share, Nextel's stock had dropped from \$45 a share earlier this year to less than \$30 last week. Making matters worse, MCI's stake would have been diluted to about 12 percent once Nextel issued new shares to complete several acquisitions of other radio dispatch companies.

But some analysts believe Nextel's system had fundamental limitations that were probably at the root of disagreements over the company's valuation. The problem is that Nextel's licenses, known as Specialized Mobile Radio, or SMR, licenses, cover less than half as many frequencies as those for cellular phones cover.

To preserve good sound quality, they argue, Nextel would have had to serve fewer customers. "This thing was not built to be a cellular system," said Jack Grubman, a telecommunications analyst with Salomon Brothers. "Something had to give somewhere."

### Consent Denied

Gerald R. Taylor, president of MCI, said the technology problems would have been surmountable. "The economics of that band are economical in terms of providing service," he said. "Motorola really did have to consent to the agreement, and they just wouldn't."

Executives at Nextel and Motorola could not be reached for comment tonight. Under the terms of the original deal, however, Motorola would have had a bigger stake in Nextel than MCI simply by trading its own licenses for radio dispatch service around the country. MCI would have invested \$1.3 billion, and contributed its well-known brand name and vaunted marketing prowess in long-distance communications.

Mr. Grubman noted that MCI had other wireless options. It can seek an alliance with the GTE Corporation or with a group of the regional Bell companies, which are the biggest operators of cellular phone service.

Two groups have already been formed, each of which has hopes of adding partners to form a nationwide network. Airtouch Communications, the cellular operations recently spun off from Pacific Telesis Group, has teamed up with US West. And the Bell Atlantic Corporation and the Nynex Corporation are pooling their cellular operations into a single network running from Maine to North Carolina.



**ATTACHMENT 5**

**Corresepondence Relating to the Data and Workpapers  
Supporting the Regressions of Professor Hausman**



Admitted:  
California  
District of Columbia  
New York  
Oregon

Law Offices  
of  
PETER A. CASCIATO  
A Professional Corporation

8 California Street, Suite 701  
San Francisco, CA 94111  
Telephone: (415) 291-8661  
Facsimile: (415) 291-8165

VIA FACSIMILE

October 3, 1994

Mary B. Cranston, Esq.  
Pillsbury Madison & Sutro  
PO Box 7880  
San Francisco CA 94120

Re: FCC PR Docket NO. 94-105 & CPUC I. 93-12-007

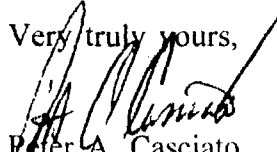
Dear Mary,

This firm is in receipt of a September 26, 1994 letter from Ellen S. LeVine, Esq. of the CPUC to David A. Gross your co-counsel of AirTouch, requesting certain information from AirTouch utilized by Jerry A. Hausman in your comments to the FCC in the above-captioned PR Docket. This is to request that any and all such information that has or will be made available to the CPUC also be made available to the undersigned as a party in this proceeding. Upon receipt of this letter, please let me know if you have made such information available yet and whether you object to this request.

In a related matter, I note in AirTouch's September 29, 1994 Opposition to the NCRA Request for Access to AirTouch Information in the same FCC proceeding, that AirTouch asserts that it has not made confidential information available to CRA despite the requirement to do so under ALJ Rulings of July 19, 1994 and August 8, 1994, pursuant to non-disclosure agreements. Please advise what information you have withheld and your justification for violation of those orders. Alternatively, please provide the information immediately.

Thank you for your cooperation in this matter.

Very truly yours,

  
Peter A. Casciato  
Attorney for Cellular Resellers  
Association, Inc.

PAC:sc



Admitted:  
California  
District of Columbia  
New York  
Oregon

Law Offices  
of

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VIA FACSIMILE

October 3, 1994

Michael F. Altschul  
Vice President, General Counsel  
Cellular Telecommunications  
Industry Association  
1250 Connecticut Avenue NW Suite 200  
Washington D.C. 20036

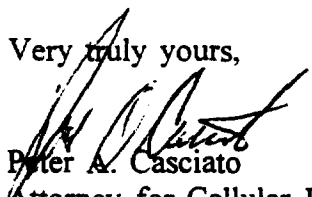
Re: FCC PR Docket NO. 94-105

Dear Mr. Altschul,

This firm is in receipt of a September 26, 1994 letter and a Motion to Compel from Ellen S. LeVine, Esq. of the CPUC to you, requesting certain information from CTIA utilized by Jerry A. Hausman in your comments to the FCC in the above-captioned PR Docket. This is to request that any and all such information that has or will be made available to the CPUC also be made available to the undersigned and Lewis Paper, Esq. as counsel to parties in this proceeding. Upon receipt of this letter, please let me know if you have made such information available yet and whether you object to this request. If you have provided the information, please deliver copies to Lew Paper on October 4, 1994. His address is Keck Mahin & Cate, 1201 New York Avenue NW Penthouse, Washington D.C.

Thank you for your cooperation in this matter.

Very truly yours,

  
Peter A. Casciato  
Attorney for Cellular Resellers  
Association, Inc.

cc: Lew Paper, Esq.

PAC:sc



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By Hand

October 12, 1994

Mary B. Cranston, Esq.  
Pillsbury Madison & Sutro  
PO Box 7880  
San Francisco CA 94120

Re: FCC PR Docket NO. 94-105 & CPUC I. 93-12-007

Dear Mary,

This is in response to your letter of October 11, 1994 which was hand-delivered to this office today at 9:15AM. Your response is nothing more than obfuscation. The July 19, 1994 ALJ Order indicates at page one that it is directed to all of the data supplied by the carriers including the "capacity utilization rates," and does not provide for redaction pursuant to a nondisclosure agreement. In the latter regard, that order requires the carriers "shall meet and confer with CRA" to negotiate the terms of the acceptable nondisclosure agreement. As you are aware, you never contacted me as required by the order. In lieu of a motion to compel, this is to request that you provide all of the withheld data pursuant to a nondisclosure agreement. In that regard, I enclose a copy of the agreement utilized and agreed to by CCAC, the association of which AirTouch is a member.

As to the Hausman data, I understand that you provided that data to the CPUC as part of the FCC proceeding. CRA is a commenting party of record in that proceeding and is entitled to receive the data. Thus, please provide the data or this matter will be brought to the attention of the FCC.

Finally, your unilateral determination that I am involved in the marketing of CRA is absurd. CRA makes no marketing decisions. Moreover, I am outside counsel and have no such duties, nor do I have such duties for CRA or any of my reseller clients.

I would appreciate your cooperation in this matter both at the FCC and CPUC level.

Very truly yours,

  
Peter A. Casciato



Admitted:  
California  
District of Columbia  
New York  
Oregon

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of  
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October 18, 1994

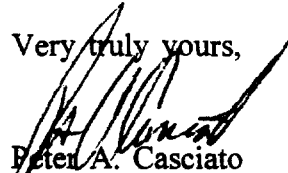
Michael F. Altschul  
Vice President, General Counsel  
Cellular Telecommunications  
Industry Association  
1250 Connecticut Avenue NW Suite 200  
Washington D.C. 20036

Re: FCC PR Docket NO. 94-105

Dear Mr. Altschul,

I note with this dismay that you have not even provided me the courtesy of a reply or the underlying Hausman data requested in my letter to you of October 3, 1994. I suggest that this type of conduct does not further your case.

Very truly yours,

  
Peter A. Casciato  
Attorney for Cellular Resellers  
Association, Inc.

cc: Lew Paper, Esq.

PAC:sc



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October 18, 1994

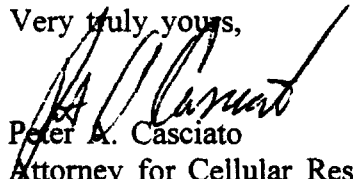
Mary B. Cranston, Esq.  
Pillsbury Madison & Sutro  
PO Box 7880  
San Francisco CA 94120

Re: FCC PR Docket NO. 94-105 & CPUC I. 93-12-007

Dear Mary,

This is to confirm that you have not responded to my letter of October 12, 1994 and not provided the requested data concerning the Hausman declaration filed by AirTouch concerning the California Petition to continue to rate regulate cellular.

Very truly yours,

  
Peter A. Casciato  
Attorney for Cellular Resellers  
Association, Inc.

PAC:sc